



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 30, 1998

Ms. Kimberley Mickelson  
Olson & Olson  
Three Allen Center  
333 Clay Street, Suite 3485  
Houston, Texas 77002

OR98-3297

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121384.

The City of Friendswood (the "city"), which you represent, received two requests for all code violation complaints against a property located at 2302 Butler. You assert that the complainants' identities are excepted from public disclosure by the informer's privilege under section 552.101 of the Government Code. Government Code section 552.101 excepts from disclosure information that is made confidential by law. You have submitted the requested information to this office for review.

A governmental body that denies a request for public information on the ground of an exception must seek the decision of the attorney general as to the applicability of that exception. Gov't Code § 552.301(a). In response to the first request, which you received on September 22, 1998, you redacted the informants' identifying information and released the remaining requested information. In response to the subsequent request, you informed the requestor that you did not seek a ruling from this office in withholding the information because "the law is clear and well settled that this type of information is protected from disclosure under the Open Records Act." A governmental body need not request an attorney general decision if there has been a previous determination that the requested material falls within one of the exceptions to disclosure. *Id.* What constitutes a "previous determination" is narrow in scope, and governmental bodies are cautioned against treating most published attorney general decisions as "previous determinations" to avoid the requirements of section 552.301(a). The governmental body need not request another decision from the attorney general under section 552.301(a) if the governmental body had previously requested and received a determination from the attorney general concerning the precise information at issue in the pending request. However, if the previous attorney general decision did not

involve the same actual information, then in most cases the governmental body should not treat that decision as a previous determination regarding the information now being requested. The governmental body may not unilaterally decide to withhold information on the basis of a prior open records decision merely because it believes the legal standard for an exception, as established in the prior decision, applies to the recently requested information.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. The city received the requestor's first written request for information on September 22, 1998. You did not request a decision from this office until October 27, 1998, more than ten business days after the requestor's first written request. Therefore, we conclude that the city failed to meet its ten-day deadline for requesting an opinion from this office.

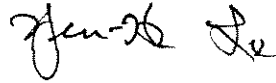
When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information.

You seek to withhold the complainants' identifying information. A claim under the informer's privilege may be waived by the governmental body since the privilege belongs to the government. *See* Open Records Decision No. 549 at 6 (1990). We conclude that the informer's privilege is not a compelling exception in this instance and, therefore, may not be used to withhold the complainant's identifying information from required public disclosure under section 552.101.

You further assert that the complainants' identifying information is excepted from public disclosure by common-law privacy. Section 552.101 of the Government Code also protects information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We conclude that the complainants' identifying information is not protected by common-law privacy and must be released.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 121384

Enclosures: Submitted documents

cc: Mr. Robert C. Kelly-Schleyer, M.A.  
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(w/o enclosures)